APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 16,434

SOUTHERN CALIFORNIA EDISON COMPANY,
Petitioner

v.

FEDERAL POWER COMMISSION,
Respondent

EL PASO NATURAL GAS COMPANY AND TRANSWESTERN PIPELINE CO.,
Intervenors

STATE OF NEW MEXICO,
Intervenor

ON PETITION TO REVIEW THE ORDERS OF THE FEDERAL POWER COMMISSION.

Present: STALEY, *Chief Judge*, and KALODNER and FORMAN, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the record from the Federal Power Commission, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of July 26, 1966, as corrected by orders of August 19, 1966 and September 1, 1966, of the Federal Power Commission in this case be, and the same is hereby affirmed.

ATTEST:

THOMAS F. QUINN
Clerk

December 21, 1967

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16,434

SOUTHERN CALIFORNIA EDISON COMPANY,
Petitioner

v.

FEDERAL POWER COMMISSION,
Respondent

EL PASO NATURAL GAS COMPANY AND TRANSWESTERN PIPELINE CO.,
Intervenors

STATE OF NEW MEXICO,
Intervenor

ON PETITION TO REVIEW AN ORDER OF THE FEDERAL POWER COMMISSION.

Argued November 9, 1967

Before STALEY, *Chief Judge*, KALODNER and FORMAN, *Circuit Judges*

OPINION OF THE COURT

(Filed December 21, 1967)

PER CURIAM:

Petitioner, Southern California Edison Company, pursuant to Section 19(b) of the Natural Gas Act, 15 U.S.C.A. Section 717r(b), seeks to set aside the July 26, 1966 Order of respondent, Federal Power Commission, which certificated proposals by El Paso Natural Gas Company and Transwestern Pipeline Company to increase the supplies of natural gas to distributors in southern California for resale to customers, including petitioner and the Los Angeles Department of Water and Power (LADWP), and denied certification of a proposal by Gulf Pacific Pipeline Company for direct sales exclusively to petitioner and LADWP.

Gulf Pacific Pipeline Company has now been dissolved. LADWP has not filed a petition for review nor sought to intervene herein. Humble Oil & Refining Company, the major gas supplier for the Gulf Pacific project, has terminated its gas supply contract with the petitioner, as have the other producers for this project. They have not filed petitions to intervene here. El Paso and Transwestern Pipeline have intervened in support of the Federal Power Commission's challenged Order.

The critical questions presented are whether, in a comparative proceeding by competing applicants for the certification of facilities and sales and/or transmission of gas to southern California, the Commission's Order was rationally based, supported by the record and reached by procedures required by law.

On review of the record we are of the opinion that the questions compel answers in the affirmative. The record discloses that the Commission complied with procedures required by law and that it reasonably exercised its discretion on substantial and sufficient basis in fact and law. Once the existence of a rational basis for the Commission's action is ascertained the reviewing power is estopped from further consideration of the Commission's action. See Dorchester Gas Producing Company v. Federal Power Commission, 353 F.2d 162 (1965), cert. den. 383 U.S. 969 (1966). And see, Community Broadcasting Service, Inc. v. Federal Communications Commission, 377 F.2d 143, 144 (1967), where it was held that the choice of competing applicants for a broadcasting license "rests within the sound judgment of the Commission".

For the reasons stated the July 26, 1966 Order of the Federal Power Commission will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

United States Court of Appeals

FOR THE THIRD CIRCUIT

No. 16434

SOUTHERN CALIFORNIA EDISON COMPANY,
Petitioner

v.

FEDERAL POWER COMMISSION,
Respondent

EL PASO NATURAL GAS COMPANY and
TRANSWESTERN PIPELINE CO.,
Intervenors

STATE OF NEW MEXICO,
Intervenor

SUR PETITION FOR REHEARING

Present: HASTIE, Chief Judge, MCLAUGHLIN, KALODNER, STALEY, FORMAN, SMITH, FREEDMAN, SEITZ and VAN DUSEN, Circuit Judges

The petition for rehearing filed by Petitioner in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

KALODNER

Circuit Judge

Dated: January 24, 1968

APPENDIX B

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

CONSTITUTION OF THE UNITED STATES

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

NATURAL GAS ACT

Section 1(b)

(Title 15 USC § 717(b))

NECESSITY FOR REGULATION OF NATURAL GAS COMPANIES

Section 1.

* * *

(b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

* * *

NATURAL GAS ACT
Section 7(c) and (e)
(Title 15 USC § 717f (c) and (e))

EXTENSION OF FACILITIES, ABANDONMENT OF SERVICE

Sec. 7.

• • •

(c) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations; *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on February 7, 1942, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after February 7, 1942. Pending the determination of any such application, the continuance of such operation shall be lawful.

In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be

decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

• • •

(e) Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

NATURAL GAS ACT
Section 19(b)
(Title 15 USC § 717r (b))

REHEARINGS; COURT REVIEW OF ORDERS

Sec. 19.

• • •

(b) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of Title 28 U.S.C. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings

before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of Title 28 U.S.C. [now covered by section 1254 of Title 28 U.S.C. by 1948 amendment (C. 646, 62 Stat. 928)].

• • •

ADMINISTRATIVE PROCEDURES ACT
Chapter 324 — Public Law 404
60 Stat. 237-244 (1946)

• • •

ADJUDICATION

Sec. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

(a) NOTICE. — Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) PROCEDURE. — The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 7 and 8.

• • •

Sec. 6. Except as otherwise provided in this Act —

(a) APPEARANCE. — Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request or controversy in any proceeding (interlocutory, summary, or otherwise) or in connection with any agency

function. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

• • •

SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section —

• • •

(c) EVIDENCE. — Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) RECORD. — The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for deci-

sion in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

• • •

SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion —

• • •

(e) SCOPE OF REVIEW. — So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

• • •

TITLE 28 USC § 1254
Added Ch. 646, 62 Stat. 928 (1948)

"§ 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

• • •

REGULATIONS UNDER THE NATURAL GAS ACT
§ 157.11
(Title 18 C.F.R. § 157.11)

§ 157.11 **Hearings.**

(a) *General.* The Commission will schedule each application for public hearing at the earliest date possible giving due consideration to statutory requirements and other matters pending, with notice thereof as provided by § 1.19(b) of this chapter: *Provided, however,* That when an application is filed less than fifteen days prior to the commencement of a hearing theretofore ordered on a pending application and seeks authority to serve some or all of the markets sought in such pending application or is otherwise competitive with such pending application, the Commission will not schedule the new application for hearing until it has rendered its final decision on such pending application, except when, on its own motion, or on appropriate application, it finds that the public interest requires otherwise.

(b) *Shortened procedure.* If no protest or petition to intervene raises an issue of substance, the Commission may

upon request of the applicant dispose of an application in accordance with the provisions of § 1.32 (b) of this chapter. [17 F.R. 7386, Aug. 14, 1952].

RULES OF PRACTICE AND PROCEDURE OF THE FEDERAL POWER COMMISSION

Section 1.26(d)

(Title 18 C.F.R. § 1.26(d))

§ 1.26 Evidence.

* * *

(d) *Official notice of facts.* Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter of technical or scientific fact of established character peculiarly within the general knowledge of the Commission as an expert body; *Provided,* That any party shall, on timely request, be afforded an opportunity to show the contrary.

APPENDIX C

CHRONOLOGICAL STATEMENT

1. In December, 1961, Edison and Tennessee Gas Transmission Corporation affiliates filed applications with the FPC (CP62-172, et al.) for necessary authorizations in connection with the so-called Pemex project, a Texas to California pipeline project which proposed to traverse northern Mexico. After a number of days of hearing, the applications were withdrawn in favor of a contemplated substantially revised and improved project which became the Gulf Pacific Project. (R.2-6, Jt. App., pp. 1-3).

2. On February 12, 1963, Gulf Pacific filed its application (Docket No. CP63-223) to construct a pipeline from the Gulf Coast area of Texas to the Los Angeles area to deliver up to 865 million cubic feet per day of natural gas to Edison and LADWP for use in generating electricity in their respective electric generating plants in southern California. (R. 68829, Jt. App., p. 747).

3. On June 7, 1963, Gulf Pacific filed a "Motion for Commission Order giving Public Notice and Request for Early Hearing on Certificate Application" in FPC Docket CP63-223 (R. 55204-55210, Jt. App., pp. 468-74). This motion was renewed as part of the "Motion of Gulf Pacific Pipe Line Company Requesting Prompt Consolidated Hearing and Continuance" filed on June 21, 1963. (R. 55252-66, Jt. App., pp. 475-489).

4. On July 12, 1963, the Federal Power Commission issued its Opinion No. 393 and accompanying order denying a certificate to El Paso for the so-called Rock Springs project in which the Commission announced it would institute a comparative proceeding "to determine how the long-term needs for natural gas deliveries to Southern California may be met in the manner which is most desirable from the standpoint of the public interest" (*re El Paso Natural Gas Company*, et al., FPC Docket G-16235, 30 FPC 77, 92). The Commission in said order also indicated that in the

"new" proceeding further opportunity would be given for the presentation of evidence on alternative methods for serving the Southern California market, including the then pending Gulf Pacific proposal, expansion of El Paso's Southern Division's facilities and expansion of Transwestern, among others. The Commission then stated its intent to "defer action on the application of Gulf Pacific in Docket No. CP 63-223" and to "consolidate it with any other applications for major pipeline construction for the supply of gas to the Southern California market filed within three months of the issuance of this opinion and order." (30 FPC 77, 93).

5. On August 2, 1963, Gulf Pacific filed a "Motion to Expedite Procedure" requesting the Commission to issue immediately an order giving public notice of its application in FPC Docket CP 63-223 and to fix an early date for the filing of petitions to intervene therein and to schedule an early hearing (R. 55349-61, Jt. App., pp. 490-502). All of Gulf Pacific's motions to expedite were dismissed by the Commission's "Order on Motions to Expedite Hearings" issued on August 22, 1963 (R. 55416, Jt. App., p. 503).

6. On September 30, 1963, El Paso filed its application (Docket No. CP 64-91) to increase its deliveries to Pacific Lighting by 250 million cubic feet per day and later (November 12, 1963) "amended" said application to propose a purported alternative which would increase its deliveries to southern California by 575 million cubic feet per day. (R. 68827, Jt. App., p. 745)

7. Transwestern's application (Docket No. CP 63-204) proposing to increase its deliveries on a daily contract demand basis from 300 million cubic feet per day to 350 million cubic feet per day had been previously filed and on October 11, 1963, Transwestern filed a new application (Docket No. CP 64-91) proposing to increase its deliveries to Pacific Lighting to 640 million cubic feet per day. (R. 68828, Jt. App., p. 746).

8. By order of the Commission dated October 21, 1963, the applications at Docket Nos. CP 63-223, CP 63-204, CP 64-91 and CP 64-76 were consolidated for comparative consideration (R. 64738-44, Jt. App., pp. 554-60).

9. By order dated December 16, 1963, petitions to intervene in the consolidated proceedings, including Edison's, were granted by the Commission (R. 65736-9, Jt. App., pp. 608-11).

10. Direct, answering, and rebuttal evidence in the consolidated dockets was served in advance, and consolidated hearings commenced June 1, 1964, concluding on March 17, 1965, after 170 days of hearing, about 28,000 transcript pages of testimony and the presentation of nearly 900 exhibits.

11. After the exchange of opening (or initial), answering, and reply (or closing) briefs, Examiner Alvin A. Kurtz, who presided at the hearing and heard all of the evidence,[1] on December 16, 1965, issued his initial decision recommending that the Gulf Pacific application (Docket No. CP 63-223) be granted, subject to certain conditions, and that the El Paso and Transwestern applications, Dockets Nos. CP 64-76, CP 63-204 and CP 64-91, respectively, be denied (R. 66567-635, Jt. App., pp. 612-80). Exceptions were filed to the Examiner's Decision and the Commission, on July 26, 1966, issued its Opinion No. 500 and accompanying order reversing its Examiner and issuing certificates to El Paso and Transwestern and denying the certificate to Gulf Pacific (R. 68820-960, Jt. App. pp. 738-878). In spite of the voluminous record referred to above,

[1] In this connection it is pertinent, we believe, to point out that before the FPC's decision in the matter, every tribunal which personally heard a detailed presentation of the problem found in favor of Edison's position. These include the Examiner in *re El Paso Natural Gas Company*, FPC Docket G-12580, 22 FPC 906, the California Public Utilities Commission (CPUC) in this proceeding (see CPUC Brief to Examiner, p. 6), the Board of Water and Power Commissioners and the City Council of the City of Los Angeles (Witmer, R. 6-7, Jt. App., pp. 3-4), and the Air Pollution Control District of Los Angeles County (APCD).

the Commission, in attempting to support its decision, made multiple references to documents and other material outside the record and relied heavily on an off-the-record economic study, the results of which were disclosed to the parties for the first time in Opinion No. 500.

12. On August 23, 1966 Edison filed its petition for Rehearing of Opinion No. 500 and accompanying order (R. 68974-69041, Jt. App., pp. 884-951), objecting among other things, to the references to and reliance on material outside the record and the off-the-record economic study, and requesting opportunity to meet and rebut same.

13. On September 2, 1966, the Commission issued its Order Requiring Filing of Statements to show whether or not some or all of the issues raised in the petitions for rehearing had been rendered moot as a result of the termination of some of the gas purchase contracts underlying the Gulf Pacific project (R. 69127-8, Jt. App., pp. 990-1). Such statements were filed by Edison (R. 69257-69; c.f. R. 69156-61, Jt. App., pp. 1040-52, 993-8) Gulf Pacific, LADWP, California Public Utilities Commission, (CPUC), El Paso and Pacific Lighting.

14. On September 21, 1966, the Commission issued its "Order Granting Rehearing for Purposes of Adequate Consideration" (R. 69301-2, Jt. App., pp. 1053-4).

15. On December 9, 1966, the Commission issued its Opinion No. 500-A and Accompanying Order on Rehearing (R. 69314-38, Jt. App., pp. 1057-81) denying the petitions for rehearing.

16. On January 30, 1967, Edison docketed its Petition for Review with the Court of Appeals for the Third Circuit seeking review of the aforesaid orders accompanying Opinions Nos. 500 and 500-A of the Commission.

17. On December 21, 1967, the Court of Appeals for the Third Circuit affirmed said Commission orders and on January 24, 1968, denied Edison's petition for rehearing (App. A).

APPENDIX D

REVISION OF COMMISSION'S GAS BALANCE STUDY TO CORRECT DEFECTS

GAS BALANCE
Year 1970
WITH GULF PACIFIC

SUMMARY OF PRINCIPAL ASSUMPTIONS

Unless otherwise noted, the principal assumptions are identical to those in Appendix B to Opp. 500 (R. 68895-903, Jt. App., pp. 813-21) and Appendix to Opp. 500-A (R. 69333-8, Jt. App., pp. 1076-81). The Commission states (Summary - App. B. R. 68895, Jt. App., p. 813) it assumed the same market as Staff in its Studies in its Briefs; however, the Commission failed to note that Staff's market for "Potential Requirements" was approximately 23.7 M²cfd higher "With Gulf Pacific" than "Without Gulf Pacific." This study corrects that oversight. Rates for volumes purchased from out of state, where the contract demand differs from that used by the Commission, were taken from Staff's Studies. No additional storage facilities were added, and available storage used reflects efficient utilization of the basic supplies available, resulting in scheduling about 16,000 M²cf more "With Gulf Pacific" than did the Commission.

Basic Supply — M²cfd Jan. 1 - Oct. 31	
El Paso	1345.3
Transwestern Firm	350.0
Transwestern LX	110.0
	1805.3
California Basic	570.6
	2375.9
Gulf Pacific	800.4
	3176.3

Basic Supply — M²cfd After Nov. 1	
El Paso	1345.3
Transwestern	640.0
California Basic	570.6
	2555.9
Gulf Pacific	800.4
	3356.3

Schedule 1

SUMMARY OF VOLUMES AND COSTS WITH GULF PACIFIC — Year 1970

Source	Contract Demand—Mcfd	Annual Volumes—Mcf	Load Factor—%	Cost at Delivery Point	Cost at Load Center	Avg. Cost ¢/Mcf
El Paso	1345.3	471,009.9	95.9	$138,077,196	$152,207,493	32.32¢
Transwestern — To 11/1/70						
Firm	350.0	106,400.0	100.0	41,953,520		
LX	110.0	33,440.0	100.0	7,022,400		
Transwestern — 11/1 to 12/31/70					67,303,600	37.63¢
Firm	640	39,040.0	100.0	12,961,280		
California						
Basic	570.6	208,270.0	100.0			
Seasonal	300.0	(5,000.0)	–0–	63,753,112	71,437,460	35.07¢
Emergency	125	406.8	47.9			
Storage	675.0	32,690.1	125.7		7,018,741	21.47¢
Total to Pacific Lighting		853,566.7		$263,767,508	$297,967,294	34.91¢
Gulf Pacific	800.4	292,146.0	100.0	85,832,495	85,832,495	29.38¢
Grand Total		1,145,712.7		$349,600,003	$383,799,789	33.50¢

Schedule 2
BORDER PRICE CALCULATION AND CALIFORNIA GAS COST WITH GULF PACIFIC

Source Border Price	Volume MPcf	100% L. F. Price ¢/Mcf	Cost Per Day $ M	Border Price ¢/Mcf	Total Cost
El Paso	1345.3	29.00	390.14		
Transwestern — Firm	350.0	39.43	138.00		
LX	110	21.00	23.10		
Total	1805.3		551.24	30.53	
California Gas Cost					
Basic	208,270.0	30.53			$63,584,831.00
Emergency	551.2	30.53			168,281.36
Total	208,821.2				$63,753,112.36
Transportation costs					
Basic	208,270.1				
Exchange	876.0				
Seasonal	10,000.0				
Emergency	406.8				
	219,552.8	@ 3.5¢			$ 7,684,348.00

Schedule 3

PRICING OF OUT OF STATE GAS WITH GULF PACIFIC

Source	Volume Demand	Volume Commodity	Demand Rate	Demand Cost
El Paso	1,345.3	471,009.9	$2.286/mo.	$36,904,269.60
Transwestern to 11/1/70				
Firm	350.0	106,400.0	(@ 100% L.F.)	
LX	110.0	33,440.0	–0–	–0–
Transwestern 11/1/70 to 12/31/70				
Firm	640.0	39,040	(@ 100% L.F.)	

Schedule 3

PRICING OF OUT OF STATE GAS WITH GULF PACIFIC

Commodity Rate	Commodity Cost	Total Cost	Transport Cost	Cost at Load Center
21.48¢	$101,172,926.52	$138,077,196.12	$14,130,297.00	$152,207,493.12
39.43¢		41,953,520.00		
21.00¢		7,022,400.00		
			$ 5,366,400.00	$ 67,303,600.00
33.20¢		12,961,280.00		

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Schedule 4
STORAGE GAS
WITH GULF PACIFIC

La Goleta	
Fixed Cost	
23.26¢ × 13,500,000 Mcf	$3,140,100.00
Fuel Cost	
0.63¢ × 16,973,681	106,934.19
Variable Cost	
0.11¢ × 16,973,681	18,671.05
Sub-Total	$3,265,705.24
Montebello	
Fixed Cost	
23.26¢ × 12,500,000	$2,907,500.00
Fixed Charge — First 5,000,000	
4.95¢ × 5,000,000	247,500.00
Next 5,000,000 to 10,000,000	
4.95¢ × 5,000,000	247,500.00
Over 10,000,000	
4.4¢ × 5,716,419	251,522.44
Fuel Cost	
0.63¢ × 15,716,419	99,013.44
Sub-Total	$3,753,035.88
Total	$7,018,741.12

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GAS BALANCE
YEAR 1970
WITH GULF PACIFIC

Period			Requirements		Requirements in Excess of Basic Supply		Deviations in Basic California Supply
No.	Month	Days	Firm	Potential	Firm	Potential	
1	1	6	2537.8	4369.0	161.9	1192.7	89.4
2	1	5	1986.6	3494.7	–0–	318.4	89.4
3	1	5	2075.9	3956.6	–0–	780.3	89.4
4	1	5	2267.6	4085.3	–0–	909.0	89.4
5	1	4	2011.4	3683.3	–0–	507.0	89.4
6	1	6	1928.3	3825.0	–0–	648.7	89.4
7	Subtotal			121580.2		23114.9	2771.4
8							
9	2	5	2118.3	3956.2	–0–	779.9	68.0
10	2	5	1953.7	3557.8	–0–	381.5	68.0
11	2	5	1927.0	3814.6	–0–	638.3	68.0
12	2	4	1971.1	3678.5	–0–	502.2	68.0
13	2	4	2340.0	4287.6	–0–	1111.3	68.0
14	2	5	2223.4	4151.2	–0–	974.9	68.0
15	Subtotal			109263.4		20327.0	1904.0
16							
17	3	6	1982.5	3803.9	–0–	627.6	20.0
18	3	6	1806.8	3603.3	–0–	427.0	20.0
19	3	4	1689.2	3382.2	–0–	205.9	20.0
20	3	5	1730.9	3524.9	–0–	348.6	20.0
21	3	4	1622.6	3140.2	–0–	(36.1)	–0–
22	3	6	1621.0	3443.4	–0–	267.1	20.0
23	Subtotal			108817.7		10352.4	540.0
24							
25	4	5	1637.2	3447.7	–0–	271.4	–0–
26	4	3	1306.5	2849.6	–0–	(326.7)	–0–
27	4	5	1463.3	3382.1	–0–	205.8	–0–
28	4	2	1261.9	2746.7	–0–	(429.6)	–0–
29	4	5	1158.5	3058.0	–0–	(118.3)	–0–
30	4	2	1182.7	2750.7	–0–	(425.6)	–0–
31	4	5	1311.7	3224.5	–0–	48.2	–0–
32	4	3	1079.7	2495.1	–0–	(681.2)	–0–
33	Subtotal			92590.4		(2698.6)	
34							
35	5	5	1286.6	3157.3	–0–	(19.0)	(20.9)
36	5	6	1199.9	3110.4	–0–	(65.9)	(67.8)
37	5	5	1039.8	2442.3	–0–	(734.0)	–0–
38	5	6	1151.9	3020.4	–0–	(155.9)	–0–
39	5	4	1047.7	2592.5	–0–	(583.8)	–0–
40	5	5	1091.4	2924.3	–0–	(252.0)	–0–
	Subtotal			89774.3		(8691.0)	(511.3)

Schedule 5
Sheet 1 of 3

GAS BALANCE
YEAR 1970
WITH GULF PACIFIC

North and South Colas Levee Supply	Exchange Gas Supply	Emergency Gas Supply	Storage (Input) Output	Deviations in Contract Supply		Market Curtailments
				El Paso	Transwestern	
100.0	4.7	67.8	675.0	-0-	-0-	255.8
-0-	4.7	-0-	-0-	-0-	-0-	224.3
-0-	4.7	-0-	400.0	-0-	-0-	286.2
150.0	4.7	-0-	400.0	-0-	-0-	264.9
150.0	4.7	-0-	-0-	-0-	-0-	262.9
-0-	4.7	-0-	200.0	-0-	-0-	354.6
1950.0	145.7	406.8	9250.0			8591.0
100.0	2.9	-0-	300.0	-0-	-0-	309.0
-0-	2.9	-0-	100.0	-0-	-0-	210.6
-0-	2.9	-0-	200.0	-0-	-0-	367.4
150.0	2.9	-0-	-0-	-0-	-0-	281.3
150.0	2.9	-0-	600.0	-0-	-0-	290.4
79.3	2.9	-0-	500.0	-0-	-0-	324.7
2096.5	81.2		7900.0			8345.3
200.0	2.9	-0-	200.0	-0-	-0-	204.7
-0-	2.9	-0-	200.0	-0-	-0-	204.1
-0-	2.9	-0-		-0-	-0-	183.0
-0-	2.9	-0-	200.0	-0-	-0-	125.7
-0-	2.9	-0-	(39.0)	-0-	-0-	-0-
-0-	2.9	-0-	200.0	-0-	-0-	44.2
1200.0	89.9		4444.0			4078.5
269.3	2.1	-0-	-0-	-0-	-0-	-0-
-0-	2.1	-0-	(328.8)	-0-	-0-	-0-
6.4	2.1	-0-	197.3	-0-	-0-	-0-
(250.0)	2.1	-0-	(115.3)	(66.4)	-0-	-0-
-0-	2.1	-0-	-0-	(120.4)	-0-	-0-
(250.0)	2.1	-0-	-0-	(177.7)	-0-	-0-
-0-	2.1	-0-	46.1	-0-	-0-	-0-
(250.0)	2.1	-0-	-0-	(433.3)	-0-	-0-
(371.5)	63.0		-0-	(2390.1)		
-0-	1.9	-0-	-0-	-0-	-0-	-0-
-0-	1.9	-0-	-0-	-0-	-0-	-0-
(110.0)	1.9	-0-	(400.0)	(225.9)	-0-	-0-
(38.1)	1.9	-0-	-0-	(119.7)	-0-	-0-
-0-	1.9	-0-	(400.0)	(185.7)	-0-	-0-
(110.0)	1.9	-0-	-0-	(143.9)	-0-	-0-
(1328.6)	58.9		(3600.0)	(3310.0)		

Schedule 5
Sheet 2 of 3

GAS BALANCE
YEAR 1970
WITH GULF PACIFIC

No.	Period: Month	Period: Days	Requirements: Firm	Requirements: Potential	Requirements in Excess of Basic Supply: Firm	Requirements in Excess of Basic Supply: Potential	Deviations in Basic California Supply
1	6	6	1104.6	3080.2	-0-	(96.1)	(67.2)
2	6	6	998.4	2986.3	-0-	(190.0)	(1.1)
3	6	4	880.4	2549.7	-0-	(626.6)	(27.7)
4	6	5	912.7	2927.8	-0-	(248.5)	(49.6)
5	6	4	846.4	2353.1	-0-	(823.2)	(24.3)
6	6	5	844.2	2909.8	-0-	(266.5)	(67.6)
7	Subtotal			85198.2		(10090.8)	(1203.8)
8							
9	7	5	889.4	2902.4	-0-	(273.9)	(24.9)
10	7	5	852.6	2926.7	-0-	(249.6)	(50.6)
11	7	5	768.7	2507.5	-0-	(668.8)	(19.8)
12	7	5	830.5	2912.2	-0-	(264.1)	(65.1)
13	7	6	750.0	2330.3	-0-	(846.0)	(47.0)
14	7	5	809.6	2850.1	-0-	(326.2)	(27.2)
15	Subtotal			84476.3		(13989.0)	(1220.0)
16							
17	8	5	751.8	2786.3	-0-	(390.0)	(69.0)
18	8	6	769.2	2793.2	-0-	(383.1)	(69.1)
19	8	4	664.6	2238.6	-0-	(937.7)	(69.7)
20	8	6	779.7	2819.5	-0-	(356.8)	(69.8)
21	8	4	688.5	2393.1	-0-	(783.2)	(69.2)
22	8	6	809.2	2826.6	-0-	(349.7)	(69.7)
23	Subtotal			83094.1		(15371.2)	(2152.2)
24							
25	9	5	794.3	2919.2	-0-	(257.1)	(58.6)
26	9	5	703.9	2296.3	-0-	(880.0)	(61.5)
27	9	5	844.9	2930.5	-0-	(245.8)	(47.3)
28	9	5	779.9	2513.0	-0-	(663.3)	(64.8)
29	9	5	892.1	2983.0	-0-	(193.3)	(64.8)
30	9	5	949.1	3071.4	-0-	(104.9)	(66.4)
31	Subtotal			83567.0		(11722.0)	(1817.0)
32							
33	10	5	930.4	3002.8	-0-	(173.5)	(65.6)
34	10	5	926.3	2506.2	-0-	(670.1)	(62.2)
35	10	5	1030.3	3054.3	-0-	(122.0)	(24.1)
36	10	4	969.0	2710.7	-0-	(465.6)	(7.7)
37	10	6	1119.5	3233.6	-0-	57.3	-0-
38	10	6	1303.6	3398.0	-0-	221.7	-0-
39	Subtotal			93448.9		(5016.4)	(790.3)
40							

Schedule 5
Sheet 2 of 3

GAS BALANCE
YEAR 1970
WITH GULF PACIFIC

North and South Coles Levee Supply	Exchange Gas Supply	Emergency Gas Supply	Storage (Input) Output	Deviations in Contract Supply		Market Curtailments
				El Paso	Transwestern	
-0-	1.1	-0-	-0-	(30.0)	-0-	-0-
-0-	1.1	-0-	(190.0)	-0-	-0-	-0-
-0-	1.1	-0-	(400.0)	(200.0)	-0-	-0-
-0-	1.1	-0-	-0-	(200.0)	-0-	-0-
(250.0)	1.1	-0-	(400.0)	(150.0)	-0-	-0-
(110.0)	1.1	-0-	-0-	(90.0)	-0-	-0-
(1550.0)	33.0		(4340.0)	(3030.0)		
-0-	1.0	-0-	(250.0)	-0-	-0-	-0-
(110.0)	1.0	-0-	-0-	(90.0)	-0-	-0-
(250.0)	1.0	-0-	(300.0)	(100.0)	-0-	-0-
-0-	1.0	-0-	(200.0)	-0-	-0-	-0-
(250.0)	1.0	-0-	(400.0)	(150.0)	-0-	-0-
(110.0)	1.0	-0-	(100.0)	(90.0)	-0-	-0-
(3850.0)	31.0		(6650.0)	(2300.0)		
-0-	1.0	-0-	(200.0)	(122.0)	-0-	-0-
-0-	1.0	-0-	(200.0)	(115.0)	-0-	-0-
(250.0)	1.0	-0-	(400.0)	(219.0)	-0-	-0-
(88.0)	1.0	-0-	(200.0)	-0-	-0-	-0-
(110.0)	1.0	-0-	(400.0)	(205.0)	-0-	-0-
(81.0)	1.0	-0-	(200.0)	-0-	-0-	-0-
(2454.0)	31.0		(7800.0)	(2996.0)		
-0-	1.5	-0-	-0-	(200.0)	-0-	-0-
(250.0)	1.5	-0-	(400.0)	(170.0)	-0-	-0-
-0-	1.5	-0-	(200.0)	-0-	-0-	-0-
-0-	1.5	-0-	(400.0)	(200.0)	-0-	-0-
-0-	1.5	-0-	(130.0)	-0-	-0-	-0-
-0-	1.5	-0-	(40.0)	-0-	-0-	-0-
(1250.0)	45.0		(5850.0)	(2850.0)		
-0-	2.1	-0-	-0-	(110.0)	-0-	-0-
(250.0)	2.1	-0-	(108.3)	(251.7)	-0-	-0-
-0-	2.1	-0-	-0-	(100.0)	-0-	-0-
(250.0)	2.1	-0-	-0-	(210.0)	-0-	-0-
-0-	2.1	-0-	55.2	-0-	-0-	-0-
-0-	2.1	-0-	219.6	-0-	-0-	-0-
(2250.0)	65.1		1107.3	(3148.5)		

Schedule 5
Sheet 3 of 3

GAS BALANCE
YEAR 1970
WITH GULF PACIFIC

Period			Requirements		Requirements in Excess of Basic Supply		Deviations in Basic California Supply
No.	Month	Days	Firm	Potential	Firm	Potential	
1	11	5	1147.7	3192.4	–0–	(163.9)	(67.3)
2	11	2	1123.0	2708.1	–0–	(648.2)	(51.6)
3	11	6	1286.6	3382.3	–0–	26.0	(60.2)
4	11	2	1136.8	2853.2	–0–	(503.1)	–0–
5	11	5	1772.1	3885.0	–0–	528.7	50.3
6	11	3	1662.3	3317.6	–0–	(38.7)	87.9
7	11	5	1942.0	3956.0	–0–	599.7	66.3
8	11	2	1763.8	3484.1	–0–	127.8	24.4
9	Subtotal			103504.4		2815.4	94.6
10							
11	12	5	1714.6	3809.9	–0–	453.6	89.4
12	12	5	1806.8	3638.8	–0–	282.5	78.3
13	12	5	1820.9	3888.6	–0–	532.3	52.1
14	12	6	1811.9	3535.6	–0–	179.3	75.1
15	12	5	1995.9	4026.8	–0–	670.5	86.3
16	12	5	2304.3	4311.2	–0–	954.9	80.7
17	Subtotal			119590.1		15544.8	2384.6
18							
19		Totals		1174905.0		72154.5	8495.5
20						(67579.0)	(8495.6)
21						4575.5	–0–

Schedule 5
Sheet 3 of 3

GAS BALANCE
YEAR 1970
WITH GULF PACIFIC

North and South Coles Levee Supply	Exchange Gas Supply	Emergency Gas Supply	Storage (Input) Output	Deviations in Contract Supply		Market Curtailments
				El Paso	Transwestern	
-0-	3.4	-0-	(100.0)	-0-	-0-	-0-
(25.6)	3.4	-0-	(574.4)	-0-	-0-	-0-
-0-	3.4	-0-	82.8	-0-	-0-	-0-
(258.1)	3.4	-0-	(248.4)	-0-	-0-	-0-
75.0	3.4	-0-	400.0	-0-	-0-	-0-
-0-	3.4	-0-	(130.0)	-0-	-0-	-0-
-0-	3.4	-0-	530.0	-0-	-0-	-0-
-0-	3.4	-0-	100.0	-0-	-0-	-0-
(192.4)	102.0		2811.2		-0-	-0-
100.0	4.2	-0-	-0-	-0-	-0-	260.0
-0-	4.2	-0-	-0-	-0-	-0-	200.0
100.0	4.2	-0-	100.0	-0-	-0-	276.0
-0-	4.2	-0-	-0-	-0-	-0-	100.0
100.0	4.2	-0-	300.0	-0-	-0-	180.0
300.0	4.2	-0-	145.5	-0-	-0-	424.5
3000.0	130.2		2727.5			7302.5
10000.0	876.0	406.8	32690.1	-0-	-0-	28317.3
(15000.0)	(-0-)	(-0-)	(32690.1)	(20024.6)	(-0-)	(-0-)
(5000.0)	876.0	406.8	-0-	(20024.6)	-0-	28317.3

APPENDIX E

Summary of Reasons In Support Of Court Of Appeals Determination That Case At Bar Not Moot

Under the principles established by the cases of *City of Pittsburgh vs. FPC,* 237 F.2d, 741 (1956), and *Scenic Hudson Preservation Conf. vs. FPC,* 354 F.2d 608 (1965), cert. den. 384 U.S. 941 (1966), Edison, as an intervenor in these proceedings, if it had never had any gas supply contracts and there had never been a Gulf Pacific Pipeline Company, would have been, is and would continue to be entitled to make a showing that the other applications should be denied because of better alternative possible means of bringing service to California, and could have sought judicial review of any subsequent erroneous decisions of the Commission, if it had been aggrieved by a refusal to receive such evidence, or by a disregard of such evidence after receipt, or by the Commission's application of erroneous standards or criteria, or by the Commission's deciding the case improperly in reliance on off-the-record matters, all as here demonstrated.

The Commission itself has consistently, since those decisions, recognized the propriety of such showings as to possible alternatives, despite the total absence of underlying commitments as to gas supplies or pipeline facilities supporting such possible alternatives. The most recent example is the very first case to come before the Commission involving applications for additional increments of gas under TSP for the California market. (*re El Paso Natural Gas Co.* Dockets CP67-217 et al.) By order of March 5, 1968, of which this Court can take judicial notice, the Commission denied motions to omit the intermediate decision procedure in said dockets for the following reasons:

> "In opposition to the movants' contentions, Staff points out that the issues in this proceeding are not simple

that the record before the Examiner consists of 28 volumes of transcript, 194 exhibits, and 20 items by reference, and that the principal issue is whether the Commission should deny the applications in favor of the construction of a 42-inch pipeline from the Delaware Basin to California which Staff contends would permit the California markets to be served in the most economic manner."[1]

Furthermore, under no conceivable circumstances could the issues raised by Edison concerning the Commission's arbitrary refusal appropriately to protect Edison and its customers by the necessary conditions to the El Paso and Transwestern certificates be considered moot or affected in any way by the dissolution of Gulf Pacific Pipeline Company or the termination of the underlying gas supply for the Gulf Pacific Project since these issues relate to the certificates which were granted by the Commission to El Paso and Transwestern and to the gas supplies covered thereby. (See Pet., pp. 28, et seq.).

An example of the appropriate relief which could now be granted to the petitioner in the case at bar, and which is sought by it, is set forth below. This Court has heretofore recognized the need for such relief because of the greater burdens which would otherwise be placed upon petitioner if it were placed in the position of a newcomer to the market. In this connection, as was observed by this Court

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[1] As reflected in the record referred to, the fact is that there were no gas supply contracts that had been entered into to supply such a 42-inch pipeline, although the Staff, even in the face of the pending divestiture proceedings in Denver following this Court's decision in *Cascade Natural Gas Company v. El Paso Natural Gas Company*, had urged that a certificate be granted to El Paso Natural Gas Company, despite Staff's own recognition that if El Paso were to build such a line it would preclude any other suppliers from entering the California market for at least six years in the future, and in spite of the fact that El Paso had never contracted to nor even expressed any willingness to undertake to build such a pipeline.

in *U.S.A. vs. El Paso Natural Gas Company*, 376 US, 651, 660:

> "This is not a field where merchants are in a continuous daily struggle to hold old customers and to win new ones over from their rivals. . . Once the Commission grants authorization to construct facilities or to transport gas in interstate commerce, once the distributing contracts are made, the particular market is withdrawn from competition."

And the critical, practical necessity for a fair hearing being afforded a competing applicant was recognized by this Court in *Ashbacker Radio Corp. vs. FCC*, 326 U.S. 327, 332 (1945), when it stated:

> "As the Fetzer application has been granted, petitioner, therefore, is presently in the same position as a newcomer who seeks to displace an established broadcaster. By the grant of the Fetzer application petitioner has been placed under a greater burden than if its hearing had been earlier. Legal theory is one thing but the practicalities are different."

Furthermore, such relief would impose no added risk upon Transwestern or El Paso different from that which was represented to the Commission as being a risk which both were ready, willing and able to assume. (See Edison's Answer to El Paso Motion, p. 12). And there is evidence in this record of a continuing interest in the California market of the major Gulf Pacific supplier, Humble Oil and Refining Company, if the Commission is reversed in the case at bar. (R. 69160-1, Jt. App., pp. 997-8).

Example of Appropriate Form Of Relief For Petitioner

Order of Supreme Court that the Court of Appeals judgment of December 21, 1967, be reversed and the Commission's decisions be reversed and remanded for further proceedings consistent with the Court's Opinion, which further proceedings should effectively:

(1) Permit Edison a reasonable period of time to reconstitute a gas supply and transportation arrangements for such an independent pipeline project;

(2) Determine the lowest cost of gas to Edison and to the total market taking into account alternative feasible supply combinations, and giving due consideration to long-term, as well as short-term, price considerations;

(3) Determine the lowest cost of energy to Edison and to the total market, giving due consideration to the relative volumes of gas, oil or other fuel to be employed, their availability and their long-term price trends;

(4) Determine whether the local police regulations for air pollution control are deemed by the Commission to be in conflict or incompatible with any federal policy and, if not, determine what alternative gas supply arrangements will permit most effective compliance therewith. (*C.f., Huron Cement Co. v. Detroit,* 362 U.S. 440, 442 (1960));

(5) Provide Edison and its customers with equal protection of the law by incorporating in the Commission's order conditions, if economics is to be the controlling consideration and if the Tailored Supply Program, or any part thereof, is to be certificated, which would protect Edison from being forced to purchase gas under local air pollution restrictions without regard to relative fuel costs;

(6) Determine whether, as of such time under the then posture of the pending divestiture proceedings (*U.S. vs. El Paso Natural Gas Company,* Civil Action No. 143-57 in U.S. District Court for the District of Utah), El Paso is able to present competent probative evidence of its ability to perform;

(7) Employ procedures which are as expeditious as possible and which will insure that any matter to be relied upon by the Commission is presented on the record, and that public documents and similar items of which the Commission may take notice are specified in such manner as to give any party the right to comment on or otherwise test and respond to the contents thereof;

(8) During the hearings on remand, and pending a final order of the Commission, permit El Paso and Transwestern to continue at their own risk, to operate the facilities already installed and deliver therefrom the volumes of gas capable of being delivered from such facilities, under temporary emergency authorization of the Commission, without prejudice to the remanded docket or any other docket involving proposals to deliver volumes of gas in addition to those at issue here.